

DETAILED ACTION

Response to Amendment

1. The amendment filed on 10/27/09 has been entered.
2. The rejection of claim 47 under 35 U.S.C. 112, first paragraph, for new matter is withdrawn due to the cancellation of this claim.
3. Applicant's arguments filed 10/27/09 have been fully considered but they are not deemed to be fully persuasive.
4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 27-36 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention, for the reasons made of record in Paper NOs: 20071130, 20081218, 20090504 & 20090921, and as follows. **This is a written description rejection for the “functional variants thereof”** (i.e., “peptides having at least 90% identity”).

As previously made of record, there is no identification of any particular portion of the structure that must be conserved, which is required for binding to A β or to inhibit SOD activity

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or copper binding ability, in order to show any minimum correlation between structure “of at least 90% identity” and the recited functional language. Thus, Applicants do not reasonably demonstrate possession of a representative number of the 90% sequence identity genus claimed, for the reasons previously made of record, and because not a single critical amino acid residue critical for functionality of the instant invention is described within the instant specification.

Thus, the written description requirements under 35 U.S.C. 112, first paragraph are not met.; consistent with that held by the courts in *Vas-Cath Inc. v. Mahurkar*, *Fiers v. Revel*, *Fiddes v. Baird* and *Univ. California v. Eli Lilly and Co* previously made of record. See also MPEP 2163.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Robert Hayes whose telephone number is (571) 272-0885. The examiner can normally be reached on Monday through Thursday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Stucker, can be reached on (571) 272-0911. The fax phone number for this Group is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Robert C. Hayes/

Primary Examiner, Art Unit 1649

January 13, 2010